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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,903	03/15/2004	David F. Duncan	VTN-5019	1475

27777 7590 01/31/2006  
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EXAMINER

WEST, PAUL M

ART UNIT	PAPER NUMBER
2856	

DATE MAILED: 01/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/800,903	Applicant(s) DUNCAN ET AL.	
	Examiner Paul M. West	Art Unit 2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 12,14-17,19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12,14-17,19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 14-17, 19 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. As to claims 14-17, 19, and 20, the claims are written as being dependent on a canceled claim. It appears that these claims should be dependent on claim --12-- instead of claim "11", and this is how they have been interpreted for the purposes of this office action.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 12, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fraim et al.

As to claim 12, Fraim et al. teach a method for detecting leaks in a sealed package 100 which comprises a closure 105 that is deformable when subjected to an

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air pressure below atmospheric pressure, the method comprising: loading the package 100 to a chamber 300 that may be opened and closed to allow for loading and unloading (Col. 6, lines 6-7), wherein the chamber 300 when closed can be evacuated or returned to atmospheric pressure (Col. 6, lines 32-34), and wherein the chamber 300 comprises a plurality of mechanical switches 340,425 that inherently have a head, a tail and a sensor, wherein the head is located a first fixed distance from the deformable closure, and the tail is located a second fixed distance from the sensor when the chamber is closed at atmospheric pressure (see Fig. 3); closing the chamber 300 and reducing the pressure in the chamber 300 to a level below the internal pressure of the package 100 and its contents (Col. 6, lines 31-33); determining whether the mechanical switches 340,425 are open or closed (Col. 6, lines 41-43). Fraim et al. do not specifically point to the method being used to test contact lens packages. However, the apparatus and method of Fraim is disclosed as being used to test any container with a flexible closure sealed to one end, therefore it would have been obvious to one of ordinary skill in the art to use the method taught by Fraim to test contact lens packages because, as Applicant states in the paragraph beginning on page 1, line 21 of the specification, it is common and well-known to test the seals of contact lens packages in order to ensure that bacterial contamination of the contents does not occur.

As to claims 16 and 17, Fraim et al. teach all of the limitations as set forth above but do not mention the amount of time it takes to complete the method. However, it would have been obvious to one of ordinary skill in the art to complete the method in

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less than 10 seconds, less than 5 seconds, or in any relatively short period of time, because it allows for greater efficiency and productivity in a manufacturing environment.

3. Claims 14, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fraim et al. in view of Stauffer et al.

4. As to claims 14, 19, and 20, Fraim et al. teach all of the limitations as set forth above but do not teach reducing the pressure to -70 kPa, -50 kPa or anywhere in between. Stauffer et al teach reducing the pressure from 0 to about -820 mb or -82 kPa between time  $t_0$  and  $t_1$ , and therefore all the pressures between 0 and -82 kPa which include all the pressures between -50 kPa and -70 kPa. It would have been obvious to use the pressures taught by Stauffer, or any pressures substantially less than the pressure inside the sealed packages, with the method of Fraim because different pressures may be needed depending on the specific types of packages being tested and/or the rigidity of the flexible membrane.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fraim et al. in view of Perhach et al.

As to claim 15, Fraim et al. teach all the limitations as set forth above but do not teach the head of the mechanical switch being spring loaded against the surface of the deformable closure when the chamber is closed under atmospheric pressure. Perhach et al. teach the head 62 of a mechanical switch 69 being spring loaded by means of spring 60 against the surface of a deformable closure 41 in a chamber 25 that is closed

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under atmospheric pressure (Col. 6, lines 31-34). It would have been obvious to one of ordinary skill in the art to employ the teachings of Perhach with the method and apparatus of Fraim because using a spring loaded head ensures that the head will remain in contact with the deformable closure as the closure moves and thus enables continuous monitoring of the closure's displacement.

### ***Response to Arguments***

5. Applicant's arguments filed 23 November 2005 have been fully considered but they are not persuasive. Applicant has argued that the Fraim et al reference does not teach Applicant's invention. However, the Fraim reference does contain all the limitations presented in claim 11 as described above. Applicant has failed to point out any specific deficiencies of the Fraim reference with respect to the limitations in claim 11.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul M. West whose telephone number is (571) 272-8590. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
HEZRON WILLIAMS  
SUPERVISORY PATENT EXAMINER  
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